

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
)
 v. Criminal No. 04-10195-PBS
)
MICHAEL PINA and)
DANIEL GOMES,)
 Defendants.)

**UNITED STATES' MOTION FOR
PRELIMINARY ORDER OF FORFEITURE**

The United States, by and through its attorney, Michael J. Sullivan, United States Attorney for the District of Massachusetts, hereby moves that this Court issue a Preliminary Order of Forfeiture in the above-captioned case pursuant to 21 U.S.C. § 853, and Rule 32.2(b) of the Federal Rules of Criminal Procedure. A proposed Preliminary Order of Forfeiture is submitted herewith. In support thereof, the United States sets forth the following:

1. On July 7, 2004, a federal grand jury sitting in the District of Massachusetts returned a five-count Indictment charging defendant Michael Pina ("Pina") with Distribution of Cocaine Base in violation of 21 U.S.C. § 841(a)(1)(Counts One through Four), and Distribution of Cocaine Base and Aiding and Abetting in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 (Count Five). The Indictment charged defendant Daniel Gomes ("Gomes") with Distribution of Cocaine Base in violation of 21 U.S.C. § 841(a)(1)(Counts Three and Four), and Distribution of

Cocaine Base and Aiding and Abetting in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 (Count Five).

2. The Indictment also contained a Forfeiture Allegation pursuant to 21 U.S.C. § 853, which sought the forfeiture of any and all property, constituting, or derived from, any proceeds the defendants obtained, directly or indirectly, as a result of such offenses; and/or any property used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, any such violations.

3. The forfeiture allegation also provided that if any forfeitable assets, as a result of any act or omission of Pina and Gomes (collectively, the "Defendants"), (a) cannot be located upon the exercise of due diligence; (b) has been transferred or sold to, or deposited with, a third party; (c) has been placed beyond the jurisdiction of the Court; (d) has been substantially diminished in value; or (e) has been commingled with other property which cannot be subdivided without difficulty, that it was the intention of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of the defendants up to the value of such property.

4. On October 12, 2006, Pina pled guilty to Counts One through Five of the Indictment, and Gomes pled guilty to County Three through Five of the Indictment, pursuant to a written plea agreements. In Section Eight of the plea agreements, Pina and

Gomes agreed to forfeit any and all assets subject to forfeiture pursuant to 21 U.S.C. § 853 as a result of their guilty pleas. Such assets included, without limitation, any monies recovered during the search of the Defendants' residence on June 24, 2004.

5. On June 24, 2004, officers seized \$1,573.90 in U.S. currency (the "Currency") from Pina and Gomes.

6. On January 12, 2007, the Court ordered forfeiture of the Currency in the Defendants' Judgments. See Docket Nos. 114 and 115.

7. By virtue of the Defendants' guilty pleas and admissions in their plea agreements, the United States is now entitled to a Preliminary Order of Forfeiture against the Currency. See Rule 32.2(b)(2); 21 U.S.C. § 853(n).

8. Upon the issuance of a Preliminary Order of Forfeiture, the United States will provide written notice to all third parties asserting a legal interest in the Currency and will publish notice of the Court's Order and of the United States' intent to dispose of the Currency in a newspaper of general circulation in the District of Massachusetts, in such manner as the Attorney General may direct, pursuant to 21 U.S.C. § 853(n).

WHEREFORE, the United States requests that this Court enter the Preliminary Order of Forfeiture in the form submitted herewith.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Kristina E. Barclay
DONALD L. CABELL
KRISTINA E. BARCLAY
Assistant U.S. Attorneys
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100

Date: September 5, 2007

CERTIFICATE OF SERVICE

I, Kristina E. Barclay, Assistant U.S. Attorney, hereby certify that the foregoing was filed through the Electronic Court Filing system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Kristina E. Barclay
Kristina E. Barclay
Assistant U.S. Attorney

Date: September 5, 2007